

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

STATE FARM INSURANCE COMPANY	:	CIVIL ACTION
	:	
v.	:	
	:	
FREDERICK BAUMERT and MARGARET	:	
BAUMERT	:	No. 00-5682

MEMORANDUM ORDER

The is a declaratory judgment action. Plaintiff seeks a declaration that it has no obligation to provide uninsured motorist ("UM") coverage to defendant Margaret Baumbert in connection with any bodily injury claims arising out of a September 17, 1999 automobile accident in excess of \$15,000. Presently before the court is defendants' motion to dismiss for failure to state a claim.

Dismissal for failure to state a claim is appropriate only when it clearly appears that plaintiff can prove no set of facts to support the claim which would entitled her to relief. See Conley v. Gibson, 355 U.S. 41, 45-46 (1957); Robb v. Philadelphia, 733 F.2d 286, 290 (3d Cir. 1984). Such a motion tests the legal sufficiency of a claim accepting the veracity of the claimant's allegations. See Markowitz v. Northeast Land Co., 906 F.2d 100, 103 (3d Cir. 1990); Sturm v. Clark, 835 F.2d 1009, 1011 (3d Cir. 1987). A complaint may be dismissed when the facts alleged and the reasonable inferences therefrom are legally insufficient to support the relief sought. See Pennsylvania ex. rel. Zimmerman v. PepsiCo, Inc., 836 F.2d 173, 179 (3d Cir. 1988).

The pertinent alleged facts are as follow.

On September 15, 1986, defendants submitted an application for insurance coverage with plaintiff. At the time of the application, Mr. Baumbert executed a Pennsylvania Uninsured and Underinsured Motorist Coverage Selection Form in which he requested uninsured motorist (UM) and underinsured motorist (UIM) coverage limits of \$15,000/\$30,000. He also executed a notice pursuant to 75 Pa. C.S.A. § 1791 acknowledging his awareness of available insurance coverage limits.

See Breuninger v. Pennland Ins. Co., 675 A.2d 353, 356 (Pa. Super. 1996) (§ 1791 requires insurer notify applicant of types and amounts of coverages insurer required to offer). The notice stated that an insured was entitled to UM and UIM coverage of up to \$100,000/ \$300,000. Defendants were both named insureds on the automobile insurance policy which was then issued by plaintiff.

On August 27, 1990, Mr. Baumbert executed waiver forms in which he indicated he wished to retain his current UM and UIM limits of \$15,000/\$30,000. At all times relevant to this action, defendants maintained and renewed the subject policy with plaintiff with UM and UIM coverage limits of \$15,000/\$30,000 and paid premiums for such coverage.

On September 17, 1999, Mrs. Baumert was injured in an automobile accident involving an uninsured motorist. She

submitted a claim for UM coverage to plaintiff for \$100,000. When plaintiff informed defendants that their UM coverage was limited to \$15,000, defendants demanded arbitration. Plaintiff then initiated this action.

Defendants argue that they are entitled to arbitration under the policy. The insurance policy provides that if the insurer and insured cannot agree about the insured's entitlement to compensatory damages from an uninsured motorist or the amount of such damages, the questions will be decided by arbitration.* The arbitration clause further expressly states that "[a]rbitration shall not be a means of settlement to decide... 2. selection of coverage option, or waiver of such coverage." Under the plain language of this clause, arbitration is mandated only in determining an insured's entitlement to compensatory damages and not when resolving coverage disputes.

Defendants argue alternatively that the 1986 Pennsylvania Uninsured and Underinsured Motorist Coverage Selection Form and the 1990 waiver are invalid under the Pennsylvania Motor Vehicle Financial Responsibility Law ("MVFRL"), and defendants are thus entitled to full UM coverage.

*The insurance policy, the 1986 Pennsylvania Uninsured and Underinsured Motorist Coverage Selection Form, and the 1990 waiver are referenced in and attached to the complaint, and thus may be considered on a motion to dismiss. See Steinhardt Group Inc. v. Citicorp., 126 F.3d 144, 145 & n.1 (3d Cir. 1997); Pension Benefit Guaranty Corp. v. White Consol. Indus., Inc., 998 F.2d 1192, 1996 (3d Cir. 1993).

Defendants contend that the 1986 coverage form failed to comply with 75 Pa. C.S.A. § 1731 because it placed both rejection forms on one sheet of paper. Section 1731 applies only to waivers of UM coverage. Section 1734 applies to reductions in coverage. See Lewis v. Erie Ins. Exchange, 753 A.2d 839, 842 (Pa. Super. 2000). Section 1734 does not incorporate the separate sheet requirement of § 1731. See Duncan v. St. Paul Fire & Marine Ins. Co., 129 F. Supp. 2d 736, 738-742 (M.D. Pa. 2001)); Lewis, 753 A.2d at 849-51. Defendants did not waive UM coverage but only selected a reduced option. The 1986 form is not facially invalid.

Defendants further contend that the August 27, 1990 reductions in UM and UIM coverage are insufficient to meet the MVFRL requirements because the preceding waiver in 1986 was void and the 1990 waiver form did not include a notice in prominent type stating that UM coverage has previously been waived as required by § 1731. As noted, the 1986 reduction of coverage appears valid. Moreover, the requirements for waiver in § 1731 apply only to outright waivers of UM or UIM coverage and not to reductions in such coverage. See Nationwide Mut. Ins. Co. v. Buffetta, 1999 WL 740395, *3 (E.D. Pa. Sept. 20, 1999), aff'd, 230 F.3d 634 (3d Cir. 2000); Lewis, 753 A.2d at 842 (§ 1731(c.1) does not apply when issue involves reduction of coverage and not outright waiver).

Defendants also argue that there was no valid reduction in coverage under § 1734 because plaintiff has not shown "conclusive evidence" that plaintiff gave the necessary notice to defendants in 1990. See Dang v. State Farm. Mut. Ins. Co., 1996 WL 421942, *3 (E.D. Pa. Jul. 19, 1996) (to prove valid waiver under § 1734 insurer must show insured had notice of rights under MVFRL and requested lower limits of UM/UIM coverage in writing); Breuninger v. Pennland Ins. Co., 675 A.2d 353, 357 (Pa. Super. 1996) (same). A plaintiff need not produce evidence to support its allegations to resist a motion to dismiss.

Defendants finally contend that the waivers subsequent to 1990 failed to comply with the MVFRL. The only document attached to the complaint dated after 1990 is a Tort Options form executed by Mr. Baumbert in 1995. Defendants do not provide any other waiver form with their motion. Moreover, they do not indicate how the waivers failed to comply with Pennsylvania law.

ACCORDINGLY, this day of August, 2001, upon consideration of defendants' Motion to Dismiss (Doc. #4) and plaintiff's response thereto, **IT IS HEREBY ORDERED** that said Motion is **DENIED**.

BY THE COURT:

JAY C. WALDMAN, J.